



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application of

Maertens et al

Atty. Ref.: 2752-31

Serial No. 08/836,075

Group: 1631

Filed: May 9, 2001

Examiner: Zeman

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Plunkett
1/16/03

For: NEW SEQUENCES OF HEPATITIS C VIRUS GENOTYPES AND THEIR USE
AS PROPHYLACTIC, THERAPEUTIC AND DIAGNOSTIC AGENTS

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December 19, 2002

Assistant Commissioner for Patents
Washington, DC 20231

RECEIVED

Sir:

DEC 27 2002

ALTERNATE RULE 181 PETITION

TECH CENTER 1600/2900

The Commissioner is requested to invoke a supervisory authority and have the restriction requirement of November 19, 2002, withdrawn and instruct the Examiner to allow the pending claims. Consideration of the following in this regard is requested.

A Response to the Office Action of November 19, 2002, has been filed herewith.

The present Petition is to be considered only in the event the Examiner refuses to withdraw the restriction requirement of November 19, 2002, as requested in the attached Response.

The present Alternate Rule 181 Petition is being filed to expedite prosecution and consideration of the restriction requirement by the Commissioner prior to the Examiner's issuance of a further Office Action on the merits. The Commissioner is urged to

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appreciate that the present claims have been allowed and issued as U.S. Patent No. 6,180,768, which was withdrawn, at the applicants request, as evidenced by the Notice published at 1243 OG 1040, February 27, 2001 (copy attached). As detailed in the attached marked-up copy of the claims of U.S. Patent No. 6,180,768 (wherein the bracketed subject matter has been deleted in preparing the presently pending claims) the allowed claims were amended to delete certain subject matter.

The issuance of the present application has been significantly delayed through no fault of the applicants. Specifically, the original Notice of Allowance was mailed September 9, 1999 and the Patent Office erroneously abandoned the application August 1, 2000, even though the applicants representative paid the final fee August 13, 1999. The Notice of Abandonment was rescinded December 6, 2000 as the Patent Office indicated that the Notice of Abandonment was mailed "through inadvertence". The subject matter of the presently claimed invention appeared in U.S. Patent No. 6,180,768, which was, technically, withdrawn prior to issuance or January 26, 2001. The Examiner has now, over two years after the original allowance, issued a restriction requirement in the Office Action of November 19, 2002, which the applicants believe is inappropriate and should be withdrawn.

Attached is a copy of the claims from U.S. Patent No. 6,180,768, wherein the undersigned has included bracketing to indicate subject matter which has been deleted as compared to the presently claimed invention. The Examiner has already examined and allowed the presently claimed subject matter and further examination of the presently

claimed invention should not place an undue burden on the Examiner, or even require further extensive search.

The Commissioner is therefore requested to invoke his supervisory authority and have the restriction requirement of November 19, 2002, withdrawn and the claims allowed.

Given the protracted history of the examination and allowance of the presently claimed invention, consideration of the present Alternate Rule 181 Petition prior to the Examiner's issuance of a further Action on the merits, in the event the Examiner refuses to withdraw the restriction requirement, is requested to expedite prosecution.

No fee is believed to be required for consideration of the present Alternate Petition as consideration of the same will only be required due to the Patent Office error and the Examiner refusing to withdraw the restriction requirement. The Commissioner is authorized by the undersigned's cover sheet however to charge any missing or deficient fees deemed to be required for consideration of the present Alternate Rule Petition to the undersigned's Deposit Account.

Grant of the present Petition and withdrawal of the restriction requirement of November 19, 2002, in the event the Examiner refuses to withdraw the restriction requirement, and allowance of the presently claimed invention are requested.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____


B. J. Sadoff

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Serial No. **08/836,075**

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